

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner lives alone and is disabled. Presently, his income, from Social Security, is \$816 a month.
2. The petitioner's last six-month eligibility period for Medicaid expired on December 31, 2001. On December 1, 2001, the Department conducted a review of his case to determine his eligibility for the six-month period January 1, 2002 through June 30, 2002. In making this determination the Department considered the petitioner's anticipated income for

the period (the amount of which is not in dispute), applied all income disregards for which the petitioner was eligible¹, and compared the net six-month income amount with the "protected income level" for a one-person Medicaid group (also not in dispute, see W.A.M. § M402).

3. Based on the above calculations the Department initially determined that the petitioner's net income exceeded his protected income level by \$483 for the January through June 2002 eligibility period. Accordingly, on December 19, 2001, the Department sent the petitioner a notice informing him that he would be ineligible for Medicaid as of January 1, 2002 until he incurred medical expenses (i.e., a spend-down) of \$483.

4. Following this initial decision the Department further reviewed the case on December 27, 2001 based on additional information provided by the petitioner. At that time the Department allowed the petitioner to deduct all predictable and verifiable out-of-pocket (i.e., not Medicaid-covered) medical expenses that he was expecting to incur during the coming six-month period. Inasmuch as the petitioner regularly incurs costs for over-the-counter

¹ There is no dispute that the petitioner only qualifies for a \$20-a-month standard deduction (see W.A.M. § M243.1).

medications that are not covered by Medicaid, the Department agreed to calculate this anticipated cost by averaging the costs of these medications over a previous period of time for which the petitioner was able to document his expenses.

5. The period of time for which the petitioner submitted his receipts was August through October 2001. Based on his expenses for over-the-counter medications during this (three-month) period the Department calculated an average monthly expense, which it multiplied by six to obtain the petitioner's anticipated expenses for these items over the six-month period that was to commence January 1, 2002. The Department then subtracted this amount from the petitioner's initial spend-down (\$483, see supra) to arrive at a new spend-down amount of \$180. The petitioner, confused by the Department's calculations and believing his spend-down to be too high, requested a fair hearing.

6. At a hearing held on January 24, 2002, the Department agreed to redetermine the petitioner's spend-down based on a monthly average of his expenses for over-the-counter medications that included November and December 2001 in addition to the months of August through October 2001. At that time the Department explained that it would also deduct the petitioner's copayments for doctor's visits, but (unlike

over-the-counter medications) only as these expenses were actually incurred—not averaged in advance. The matter was continued to see if the petitioner agreed with these recalculations.

7. Another hearing was held on February 21, 2002. Unfortunately, the months of November and December 2001 had brought down the petitioner's monthly average for over-the-counter medications and had resulted in a slight increase in his spend-down. However, the Department had reduced the spend-down by allowing all the petitioner's copayment expenses incurred since January 1, 2002. The hearing was again continued to allow the petitioner to compare his current expenses for over-the-counter medications with the average that had been determined based on his expenses from August through December 2001. Thus the petitioner could determine whether it would be in his interest to also deduct these expenses as incurred (like his copayments) rather than in advance based on an average determined by previous-months expenses.

8. A hearing was reconvened on March 19, 2002. The petitioner had not yet decided whether he wished the Department to deduct his expenses for over-the-counter medications as incurred, but the Department informed him that

he could still make that election. The petitioner's lingering grievance, however, was his belief that his spend-down was still higher than it had been during previous six-month periods. The Department explained that in the past it had erroneously deducted the petitioner's copayments in advance based on a monthly average determined by past expenses (like it was now doing for over-the-counter medications). The Department maintained that under the regulations the petitioner's expenses for copayments were not regular and predictable enough to accurately predict them in advance. Thus, it would only deduct these expenses as incurred by the petitioner during the current six-month eligibility period.

9. The petitioner does not maintain that the Department has failed to deduct any particular out-of-pocket expense that he has incurred. He also does not dispute that the Department is using the correct protected income level for a one-person Medicaid unit.

ORDER

The Department's decision is affirmed.

REASONS

There is no question that the procedures used in determining financial eligibility for Medicaid are all but incomprehensible to the uninitiated. The process is further complicated for any individual when, as here, the Department (due to an admitted error) changes the way it treats deductions from one eligibility period to the next. In this case, however, over the course of three separate hearings the Department has demonstrated that it has correctly calculated the petitioner's income and out-of-pocket medical expenses in determining his spend-down. The only issue actually in dispute is whether the petitioner is allowed to deduct his expenses for copayments for doctor visits in advance of his actually incurring them.

In this regard the Department maintains that expenses for doctor visits are not predictable enough to calculate in advance. This appears to be borne out by the regulations.

W.A.M. § M423.21 includes the following provisions:

Predictable expenses

In general, an expense is incurred on the date liability for the expense begins. Only four types of predictable medical expenses may be deducted before they are incurred, if it can be reasonably assumed that the expense will continue during the accounting period:

- health insurance premiums (M431);

- medically necessary over-the-counter drugs and supplies (M432.2).
- ongoing, noncovered personal care services (M432.3); and
- assistive community care services provided to residents in a level III residential care home either not enrolled as a Medicaid provider or with admission agreements specifying the resident's financial status as private pay (M432.4). . .

Although over-the-counter medications are specifically included in the above regulation, clearly doctor visits are not. It must be concluded that the Department's decision in this matter to only deduct the petitioner's expenses for copayments for doctor's visits as they are incurred, rather than in advance based on a projected average, is in accord with the above regulation. Thus, the board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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